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FIDELITY NATIONAL TITLE INSURANCE
7 COMPANY, et al.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FIDELITY NATIONAL TITLE
INSURANCE COMPANY, et al.,

Plaintiffs,

vs.

JAMES C. CASTLE aka J.
CHRISTOPHER CASTLE et al., and
Does 1 through 100, inclusive,

Defendants.

No. C-11-00896 YGR

**DECLARATION OF KIMBERLY A.
MILLINGTON IN SUPPORT OF
PLAINTIFF CHICAGO TITLE
INSURANCE COMPANY'S MOTION TO
COMPEL DEFENDANT JAMES CASTLE
TO PROVIDE FURTHER RESPONSES
TO REQUEST FOR PRODUCTION OF
DOCUMENTS AND REQUEST FOR
SANCTIONS AGAINST CASTLE AND
ANN DRAPER**

[Notice of and Motion to Compel Castle to
Provide Further Responses to Request for
Production of Documents and Request for
Sanctions; Declaration of Stephen C. Seto; and
[Proposed] Order Filed Concurrently Herewith]

Date: June 17, 2014
Time: 2:00 p.m.
Courtroom: 1
Judge: Hon. Yvonne Gonzalez Rogers

No Trial Date Set

And Related Cross-Actions

I, KIMBERLY A. MILLINGTON, declare as follows:

1 1. I am a licensed attorney in good standing in the State of California and a contract
2 attorney for the law firm of Bergquist Wood McIntosh Seto, LLP, attorneys for Plaintiff Chicago
3 Title Insurance Company (“Plaintiff”) in this matter.

4 2. Except where based on information and belief, I have personal knowledge of the
5 facts stated in this declaration and could and would testify to them if called upon to do so.

6 3. I submit this declaration in support of Plaintiff’s Motion to Compel Defendant
7 James C. Castle (“CASTLE”) to Provide Further Responses to Request for Production of
8 Documents and Request for Sanctions against CASTLE and his Counsel, Ann Draper.

9 4. Attached as **Exhibit “1”** is a true and correct copy of the Request for Production of
10 Documents (“RFP”) Plaintiff served on CASTLE.

11 5. Attached as **Exhibit “2”** is a true and correct copy of Response of James C. Castle
12 to RFP.

13 6. After the status conference on March 24, 2014, Ms. Draper indicated to me and Mr.
14 Seto outside the Courthouse that some of the documents she had sent in response to the RFP were
15 not CASTLE’s documents but documents that she just had “lying around.”

16 7. On March 31, 2014, Ms. Draper and I appeared before the Court at the compliance
17 hearing. The Court questioned Ms. Draper about the documents and why she had not produced
18 them in compliance with the Court Order from January (Dkt. 547). She asked Ms. Draper if her
19 trial had gone forwarded and Ms. Draper responded that it had not. I raised issues regarding the
20 very small number of documents that were being produced, the fact that it was not clear what
21 documents belonged to CASTLE and which documents were just “lying around”, the fact that
22 absolutely no correspondence such as e-mails, and the fact that the production was not verified.
23 After a lengthy conference, the Court ordered me and Ms. Draper to meet and confer at the
24 Courthouse regarding the responses.

25 8. Ms. Draper and I met and conferred alone for approximately an hour. While it
26 appeared that some progress was made (such as Ms. Draper telling me that the document
27 production should be considered as initial disclosures and not actually responsive to the RFP as
28 well as some agreements regarding the meaning and breadth of the requests), when we met with

1 the Court's research attorney about the results of the meet and confer, much changed.

2 9. Ms. Draper and I met with the Court's research attorney to go over what happened
3 during the meet and confer but many of the issues that seemed to have been resolved were raised
4 again. Finally, Ms. Draper agreed that she would provide an amended response on behalf of
5 CASTLE to the RFP.

6 10. Attached as **Exhibit "3"** is a true and correct copy of Amended Response of James
7 C. Castle to RFP ("Amended Response").

8 11. On April 22, 2014, I prepared a Joint Statement in compliance with this Court's
9 Order. (Dkt. 652.) The Joint Statement included Plaintiff's statement regarding CASTLE's
10 compliance and requesting that the compliance hearing remain on calendar. I e-mailed it to Ms.
11 Draper when it was completed at 5:24 p.m. on April 22, 2014, and due to scheduling issues, asked
12 Ms. Draper to provide any changes to the draft Joint Statement portion and any additional
13 statement she had by 1:00 p.m. on the due date, April 23, 2014, to ensure it was filed timely. Ms.
14 Draper responded by electronic mail at 10:19 a.m. on April 23, 2014 that she had a death in her
15 family and asked that someone else from Plaintiff's counsel's office be available to meet and
16 confer with her in the afternoon. I responded at 10:36 a.m. that as no one was available from
17 Plaintiff's firm in the afternoon to meet and confer, I would file a statement on behalf of Plaintiff
18 only. Ms. Draper did not respond back but then e-mailed me at 12:56 p.m. saying she was
19 attaching her changes although no changes were attached. I sent her an e-mail that I was about to
20 leave and there was no attachment, and Ms. Draper provided her changes at 1:07 p.m. and the
21 Joint Statement was filed with this Court.

22 12. On April 29, 2014, the parties attended the compliance hearing. The Court
23 questioned the parties for a great deal of time and went through the various issues that Plaintiff
24 still had with the responses and the lack of documents that were produced. The Court questioned
25 Ms. Draper extensively about the voluminous objections that were made in the responses. Ms.
26 Draper confirmed that the sole objections that applied were attorney-client privilege, attorney
27 work product doctrine, and her claim that the joint defense privilege also applied. She maintained
28 that the objections were made to preserve the objections for the future. She also claimed that

1 CASTLE had no other responsive documents other than about 300 e-mails which she had not yet
2 reviewed. At no time during any of our meeting and conferring did Ms. Draper indicate that
3 CASTLE had no other responsive documents and in fact, made comments that made it clear
4 CASTLE had not searched for such documents.

5 13. Attached as Exhibit “4” are true and correct copy of documents provided by Ms.
6 Hangarter to Mr. Seto that are related to the transaction involving her property on Stone Drive.

7 14. I spent 31.3 hours preparing Plaintiff's Statement (Dkt. 648), preparing for and
8 attending the compliance hearing on March 31, 2014, reviewing the Amended Response and
9 caselaw cited in it, preparing the Joint Statement (Dkt. 668), reviewing the documents produced
10 by CASTLE, preparing for and attending the compliance hearing on April 29, 2014, and preparing
11 this Motion and supporting documents. Mr. Seto charges his client \$280.00 an hour for my time.
12 This hourly rate is reasonable as I have been practicing litigation for 21 years and have tried 7
13 cases to verdict, I was formerly the Managing Attorney of the branch offices for two law firms,
14 and I currently have my own practice which includes being a panel attorney for the Bar
15 Association of San Francisco. I spent a total of 31.3 hours, for a total of \$8,764.00 in attorney's
16 fees related to this discovery dispute.

17 15. Mr. Seto's declaration sets forth that he spent a total of \$5,512.50 in fees regarding
18 this discovery dispute. Thus, my time of \$8,764.00 plus Mr. Seto's time of \$5,512.50 total
19 \$14,276.50 in fees related to this discovery dispute.

20 This declaration is executed at Walnut Creek, California this 9th day of May 2014. I
21 declare under the penalty of the laws of the United States that the above is true and correct.

22 /s/ Kimberly A. Millington
23 KIMBERLY A. MILLINGTON
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